

land are local; and it further enacts that an executor may be sued, either in the county where he resides or where he obtained administration, 1838, ch. 329.^{5a} In cases of *scire facias* against heirs and terre-tenants, where any of the heirs or terre-tenants reside in a different county than that in which the judgment, on which the writ issued, was obtained, duplicates of the writ may be directed to each county wherein any of such heirs or terre-tenants reside, sec. 94, and by sec. 95,⁶ in all cases where a joint action is instituted against heirs and devisees, duplicate writs may issue in like manner, provided the action be brought in the county in which the deceased died, if any of *his heirs* reside therein, and if not, in the county in which his real estate, or some part thereof is situated. As to *scire facias* against heirs and terre-tenants from the Court of Appeals, see Art. 29, secs. 34, 35, 36.⁷ By sec. 89,⁸ any captain, &c., of any steamboat or other vessel, may be sued for the non-delivery or injury of any goods in the county where the goods are received on **488** board, or *where the delivery was by the contract to be made. Attornies practising in any court of any county may also be sued there for professional neglect, though they are inhabitants of another county, Art. 11, sec. 13.⁹

If the defendant be sued in a wrong county,¹⁰ he must appear at the return of the writ and move for a *non pros.*, and on producing proof by affidavit of his non-residence he will be discharged, *Hoffman v. Prout*, 4 H. & McH. 105. There are two precedents in 2 Harr. Ent. 281, 477, of the objection being taken by a plea in abatement under the rather quaint name of *misprision of commorancy*; and such a plea was sustained by the Court of Appeals in *State v. Hamilton*, 32 Md. 348, from which it seems that the defence need not be taken *at the very return of the writ*; see however, *Horner v. O'Laughlin*, 29 Md. 465, where it was also held, that the mere filing of the affidavit of a third party as to non-residence of the defendant was not enough, without a motion for *non-pros.*, or presentment of the objection in some other way. And it has always been held that the defect was cured by appearance. Technical precision is still required in dilatory pleading, and the party ought perhaps to negative the return of a *non est* against him in the proper county; the rule being, that in pleading a statute an exception in the body of the act must be negatived, see *Bode v. State*, 7 Gill, 324. This seems to be countenanced by *Patterson v. Wilson supra*, where it was held that, in local actions, under the succeeding section, it is necessary to allege in the declaration that the defendant had removed out of the county in which the property lies or cannot be found therein, if he be sued in a different county.

The plaintiff, however, may contest the fact of the defendant's inhabitancy in another county, and the practice is for the question to be tried and decided by the Court. Corporations have a residence in par-

^{5a} Code 1911, Art. 75, sec. 148.

⁶ Code 1911, Art. 75, secs. 157, 158.

⁷ Code 1911, Art. 5, secs. 72-74.

⁸ Code 1911, Art. 75, sec. 149.

⁹ Code 1911, Art. 10, sec. 14.

¹⁰ See note 3 *supra*.